IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CWP No. 1112 of 2006.

Reserved on : 3- 01- 2007.
Date of Decision: -01- 2007.

Krishma Educational Centre. Petitioner.

Versus

H.P. Board of School Education and others. Respondents.

Coram

Hon'ble Mr. Justice Deepak Gupta, J.
Hon'ble Mr. Justice S. S. Thakur ,J.

Whether approved for reporting[1]?

For the petitioner : **Mr. G.C. Gupta, Senior Advocate with Mr.Ramakant Sharma, Advocate.**

For the respondent No.1 : **Mr. Lovneesh Kanwar, Advocate.**
For the respondent No.2 : **Mr. M.S. Chandel, Advocate General, with Mr. R.M. Bisht, Dy. Advocate General.**

PER SURIDNER SINGH, J.

The Petitioner is an Educational Institution and a registered society under the Societies Registration Act, 1860 having its head office at Rati Road Dadour (Ner Chowk), District Mandi (H.P.). It is duly recognized by the National Council for Teachers Education, (NCTE), Northern Regional Committee, Jaipur. The petitioner has set up J.B.T. (Elementary Teacher Education) Training Centre at Dadour (Ner Chowk) in Mandi. It was denied the sponsorship of candidates, for admission to J.B.T. by the respondent Board, for want of permanent affiliation. Feeling aggrieved by the said act of the respondent Board, the petitioner has

[1] Whether reporters of the Local papers are allowed to see the judgment?

invoked the extra-ordinary writ jurisdiction of this Court, inter-alia prayed that the respondents be directed to sponsor the candidates for admission to J.B.T. (Elementary Teacher Education) Training in its Institute from Academic Session 2006-2008 onwards and also that the respondents No.1 and 2 be directed to grant permanent affiliation to the Petitioner's Institute for imparting JBT (Elementary Teachers Education) Training etc.

As a matter of fact, the Petitioner-Institute was granted the recognition by the National Council for Teachers Education (NCTE), a statutory Body of the Government of India, for an annual intake of 50 seats in the first year and the same number of seats for the 2nd year in JBT (Elementary Teacher Education) Course of two years duration with effect from academic session 2004-2005 subject to the fulfillment of conditions mentioned in Annexure-P3 dated May 28, 2004 which was subject to the condition that the affiliating body shall ensure that among other things, the institution appoints required number of Faculty Members as per the norms of NCTE/State Govt./U.G.C./affiliating Body and also all other such requirements as may be prescribed by other Regulatory Bodies.

It is pertinent to note that under the National Council for Teacher Education Act, 1993, it is only the National Council for Teacher Education who regulate the aforesaid Course and for that purpose, Northern Regional Committee has been constituted for the Northern States, including Himachal Pradesh, with its Office located at Jaipur which is the competent Authority to grant recognition and to regulate the Course, aforesaid. The respondent Board has made its own JBT Affiliation Regulations 2004, which additionally provides for granting the provisional affiliation for the JBT Course with some exceptions. The

procedure for affiliation is laid down in para 1.14 (g) of the said Regulations providing for the provisional affiliation for one year in the first instance, subject to the fulfillment of certain conditions within the stipulated period, extendable on year to year basis for such period not exceeding two years at a time. It is alleged that the Petitioner-Institution never applied for the affiliation for the sessions, i.e, 2005-2006 and 2006-2007. Therefore, in the absence of such affiliation, the Petitioner Institute could not run the course of JBT in its Institute for want of affiliation and no student was sponsored to the Institute aforesaid. Hence this petition.

We have heard learned counsel for the parties.

Shri G.C. Gupta, learned Senior Counsel for the petitioner-Institute has vehemently argued that the Petitioner Institute is a duly recognized Institution, for offering the Course/Training in Teacher's Education, under the National Council for Teacher Education Act, 1993 and by virtue of Section 16 of the act, no 'Examining Body' on or after the appointed day, can grant affiliation, whether provisional or otherwise, to any Institute for a course or training, covered under the Act, unless the Institution concerned has obtained the recognition from the Regional Committee concerned under Section 14 or the permission for a course or training under Section 15 of the Act. The learned counsel further ventilated that despite this mandate, the respondent Board insisted upon the affiliation with them under their Regulations even after removing the objections raised and the respondents not only raised frivolous objections but also made to toss from one office to another, which is contrary to the law and the well settled legal position, as such, the prayer sought deserves to be accepted.

Contra, the learned Advocate General & Shri Lovnesh Kanwar, supported the stand taken by the respondents in reply and prayed for the dismissal of the petition.

We have examined the matter in the light of the law and facts adduced on record by affidavits.

We have carefully gone through the preamble of National Council for Teacher Education Act, 1993. It provides for establishment of a National Council for Teacher's Education (NCTE) with a view to achieving planned and coordinated development of the teacher-education system, throughout the Country and regulation and proper maintenance of norms and standards in the teacher-education system and for all matters concerned therewith. With a view to achieve that object, the National Council for Teacher Education has been established at four places by the Central Government. It is quite clear that the field is fully and completely occupied by the Central Legislation which is covered by Entry 66 of List 1 of VIIth Schedule of the Constitution of India. It is therefore, not open either to the State Legislature or to any instrumentality of the State to encroach upon the field which stands already occupied under the relevant list. It is only the Parliament which could exercise the power by making the appropriate law. Therefore, in these circumstances, neither it is open to the State government to refuse the permission nor the respondent Board on any policy consideration or otherwise object to it.

In the instant case, the Northern Regional Committee which is under NCTE, vide Annexure-P3 dated 28th May, 2004 granted recognition to the petitioner-Institute for JBT (Elementary Teacher Education) Courses of two year duration in terms of Section 15 (i) of

NCTE Act, 1993 but the respondent Board gave provisional affiliation to them for a period of one year vide letter Annexure-P4 dated 16.10.2004 subject to removal of some discrepancies. Thereafter, the petitioner informed regarding the removal of the discrepancies and requested to grant the permanent affiliation for JBT Course vide Annexure-P7 dated 8.11.2004. In reply, the Government vide letter Annexure-P7 on the same day informed the Petitioner Institution that as per the Government decision, the candidates for the JBT Training in Private Institutions running in the State as well as in District Institutes of Education and Training (DIETs), shall be selected by the H.P. Board of School Education. Therefore, the candidates for the JBT training in the Petitioner's Institute shall be sponsored by the respondent Board from the 'Common Entrance Test' conducted by them which was held up due to some litigation in the High Court, the State Government is seized of the matter and efforts are being made to clear the matter on priority. Copy of this letter was endorsed to the respondent Board and also Director of Primary Education. Again on 30.10.2006, vide communication Annexure-P8, the Petitioner's Institute made the representation for allotment of the students for the JBT Course and vide letter Anneuxre-P9, it was informed to correspond with the Director, Elementary Education. Thereafter, the petitioner had sent a letter Annexure-P10 dated 30.10.2006 to the Director for allotment of the students for the said course but it did not yield any result. Thus, the petitioner-Institution took redress to this Court by filing the present petition.

As has been seen, the Petitioner Institute had, time and again, asked for the allotment of students for the course as an Institution

recognized by NCTE and also requested for their affiliation to the respondents under the regulations but they had couched the provisions in the mandatory form to get the affiliation from them which make it imperative to get the Institute affiliated by moving an application and produce 'No Objection Certificate (NOC) from the State Government unless otherwise dispensed with or exempted by the State Government/NCTE as per para 1.13 of the aforesaid regulations which came into force with effect from 19.10.2004.

However, on perusing Section 15 of the 1993 Act, aforesaid, the final authority, for recognition, in our opinion, lies with the NCTE in the light of the relevant provisions of the Act and the appropriate authority to take decision regarding opening of new educational institutes is NCTE. Neither the State nor the University or Board can act contrary to the decision of NCTE, they are supposed only to implement the decision of NCTE and in this behalf, we are supported mutatis -mutandis by the view taken by the Supreme Court in *State of Maharashtra vs. S.D.S.S. Mahavidyalaya 2006 (3) Scale 675.* which has categorically held that the final decision can only be taken by the NCTE and once the decision is taken by NCTE, it has to be implemented by all the authorities in the light of the Act and the law declared by the Apex Court in ***St. John Teachers Training Institute (2003) 3, S.C.C. 321***. Therefore, the absence of non-production of NOC by the Institution after the recognition has been given by NCTE is wholly immaterial and irrelevant.

Therefore, in these circumstances, the crux of the matter is that neither the State Government nor the Board can refuse such permission to the Petitioner Institution which has been granted permission to start

the JBT Elementary Course by the NCTE nor the Policy decision of the State Government or the respondent Board in the form of regulation or otherwise, in the light of the mandatory provisions of the Act, aforesaid, can with-hold sponsoring of the candidates to the petitioner Institution. Vide order dated 1-1-2007, we directed the respondents to provide the complete information by way of affidavits, with regard to number of candidates who have passed the JBT Entrance Examination, the number of candidates who have been sponsored to various Institutes and the number of candidates, if any or the waiting list for being sent for the JBT Course. In compliance, the Affidavit was filed by the respondent No.4. Precisely, It has been informed that as per the revised result by the respondent Board, 1742 candidates were declared successful as against 1800 seats, in 12 DIETS of the State but only 1586 candidates had joined on or before 13.10.2006. Again to fill up 156 remaining seats, only 151 candidates were recommended. Thus by the end of December, 2006, only 1684 candidates had joined in different DIETS and the Course had already commenced w. e. f. 3.10.2006 Thus, out of total 116 vacant seats in twelve DIETs of the State, the respondent Board has been asked to sponsor 23 eligible candidates (Categories/Sub categories wise) in respect of DIET of District Lahaul & Spiti tribal Districts which is still awaited. It is also mentioned that vide letter dated 23.12.2006, two Private Institutes, namely, Bhartiya Education Society Kullu (RTTI) and Institute of Education, Hari Devi, Shimla, (subject to affiliation by respondent no.1) were not assigned any candidates for admission to the said Course.

On the perusal of the above affidavit filed by the Director, Elementary Education, we have found that still there is a waiting list of

the candidates with the respondent No.1 and the act of the respondents insisting upon affiliation by them under the regulations was contrary to the law, therefore, against the aforesaid background, we hereby direct that the respondents shall allot 50 candidates to the Petitioner's Institute on merits forthwith. However, it is clarified that the petitioner cannot at all be permitted to admit the students/candidates of their own, in view of the law discussed above. Learned counsel for the petitioner has assured us that in case the candidates are allotted to the Petitioner's Institute, it will cover the entire syllabi within the time frame. The writ petition is disposed of accordingly with no order as to costs.

CMP No. 1750 of 2006.

No order in view of the disposal of the main writ petition.

(Deepak Gupta), J.

(Surinder Singh), J.

January , 2007
(BM)